CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓ Force	☐ Discourt.	☐ U.S.
Glenn Brown		Team # 1	201304829	☐ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Precinct:	18 Mo. SOL	EO SOL
Sunday, 05/26/2013 5:34 AM		335 East 111th Street		23	11/26/2014	11/26/2014
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCI	RB
Sun, 05/26/2013 12:30 PM		IAB	Phone	Mon, 06/0	3/2013 2:17 PM	
Complainant/Victim	Type	Home Addre	ess			
Witness(es) Home Address						
Subject Officer(s)	Shield	TaxID	Command			
1. POM David Wheeler	16703	947606	023 PCT			
2. POM Christopher Derco	14560	946917	023 PCT			
Officer(s)	Allegati	on		Inve	estigator Recon	nmendation
A.POM Christopher Derco	Force: PO Christopher Derco used physical force against § 87(2)(b)					
B.POM David Wheeler	Force: PO David Wheeler used physical force against \$87(2)(b)					

Case Summary

On May 26, 2013, Sgt. Joseph Hartnett reported a prisoner injured in police custody to the Internal Affairs Bureau. On June 3, 2013, the CCRB received this complaint via IAB log #13-22897.

On May 26, 2013, at approximately 5:34 am, \$87(2)(b) was apprehended by PO Christopher Derco and PO David Wheeler of the 23rd Precinct in front of 335 East 111th Street in Manhattan and the following allegations resulted:

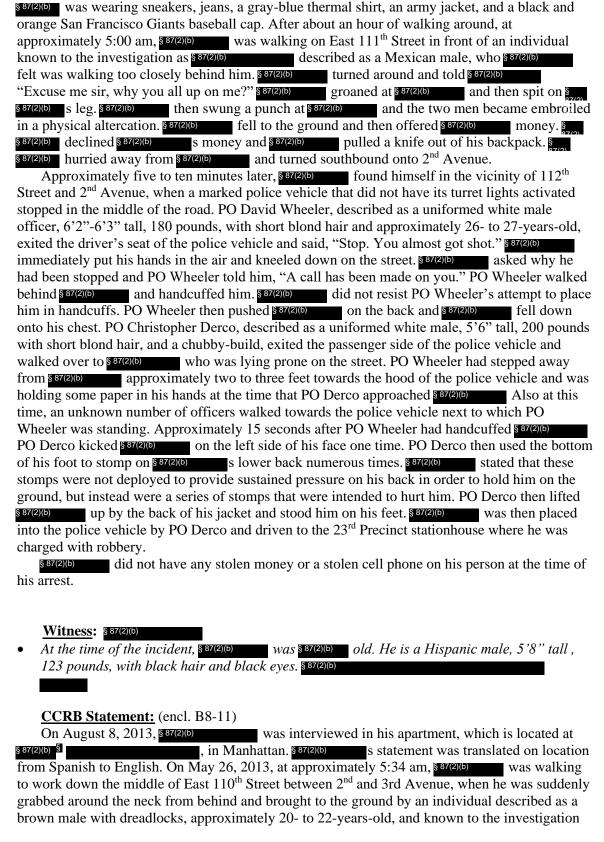
•	Allegation A) Force: PO Christopher Derco used physical force against §87(2)(b)
•	Allegation B) Force: PO David Wheeler used physical force against \$87(2)(6)
	§ 87(2)(g)

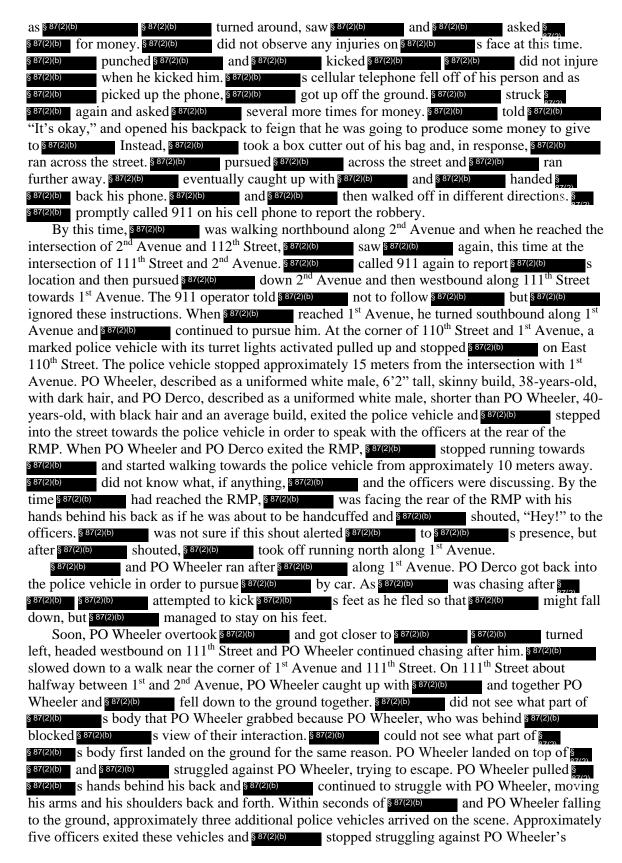
Results of Investigation

Civilian Statements

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Page 2 **CCRB Case # 201304829**





Page 4 CCRB Case # 201304829

NYPD Statements:

Subject Officer: OFFICER DAVID WHEELER

- At the time of the incident, PO Wheeler was \$87(2)(b) old. He is a white male, 6'4" tall, 200 pounds, with blond hair and blue eyes.
- On May 26, 2013, PO Wheeler worked from 11:15 pm to 7:50 am, was assigned to Patrol Sectors E and H, was working with PO Derco, was dressed in uniform, and was assigned to a marked police vehicle, RMP #3915.

Memo Book: (encl. C1-4)

On May 26, 2013, PO Wheeler noted in his memo book that at 4:57 am he was performing a directed patrol at East 110th Street and Lexington Avenue. At 5:10 am, PO Wheeler received a notification of a larceny of a cell phone in progress at East 111th Street and 1st Avenue. At 5:12 am, PO Wheeler noted that he had stopped one male in regards to the larceny. This male fled the arresting officer, headed north on East 110th Street and 1st Avenue to a location in front of 335 East 111th Street. At 5:34 am, \$37(2)(5) (DOB: \$37(2)(5)) was placed under arrest in front of 335 East 111th Street for \$37(2)(5)

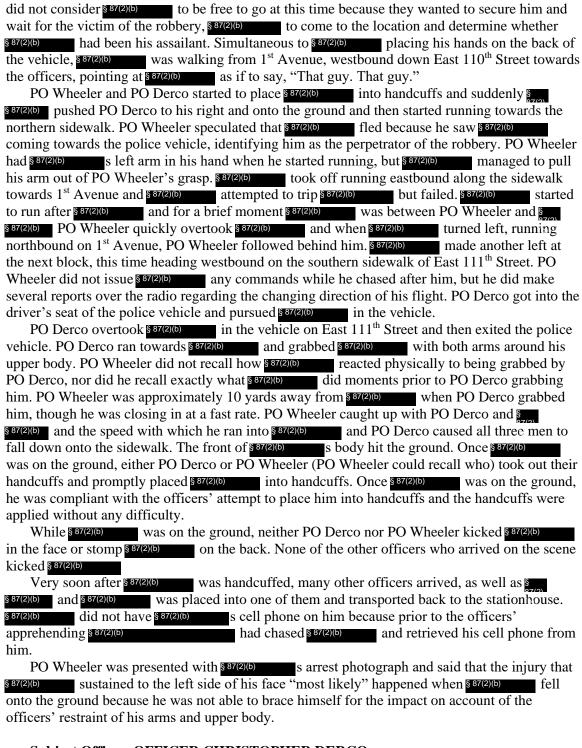
Arrest Report: (encl. C7-9)

On May 26, 2013, at approximately 5:34 am, PO Wheeler arrested \$87(2)(b) opposite 335 East 111th Street in Manhattan. The arrest report narrative states that \$87(2)(b) stated that \$111th Street in Manhattan. The arrest report narrative states that \$87(2)(b) was charged with \$87(2)(b) was charged with \$87(2)(b) was wearing a green coat, a black baseball hat, and orange sneakers.

CCRB Statement: (encl. C10-12)

On December 11, 2013, PO Wheeler was interviewed at the CCRB. On May 26, 2013, at approximately 5:34 am, PO Wheeler was driving a marked police vehicle eastbound on East 110th Street between 2nd Avenue and 1st Avenue in Manhattan when a call came over the radio stating that a robbery had just been committed in the area. The radio run also provided a detailed description of the perpetrator; however, PO Wheeler no longer recalled what specifically that description was. Soon after the description went over the radio, PO Wheeler observed § 87(2)(b) who closely matched the description that had just been broadcast over the radio, walking on the northern sidewalk of East 110th Street. §87(2)(b) stepped off the sidewalk and started to cross behind the moving police vehicle when PO Wheeler stopped the vehicle. PO Wheeler exited the driver's side door and instructed \$87(2)(0) who was approximately 15 feet away from PO Wheeler, to stop and come to the back of the police vehicle. §87(2)(b) respond, but complied and walked over to the back of the police vehicle. PO Wheeler speculated that he or PO Derco, who had exited the passenger's side of the police vehicle, instructed \$87(2)(b) to put his hands onto the trunk of the vehicle and asked him if he had any weapons on placed his hands onto the trunk of the vehicle while PO Wheeler stood behind and to his left and PO Derco stood behind \$87(2)(b) and to his right. PO Wheeler

Page 5 **CCRB Case # 201304829**



Subject Officer: OFFICER CHRISTOPHER DERCO

• At the time of the incident, PO Derco was \$87(2)(b) old. He is a white male, 5'6" tall, 185 pounds, with brown hair and green eyes.

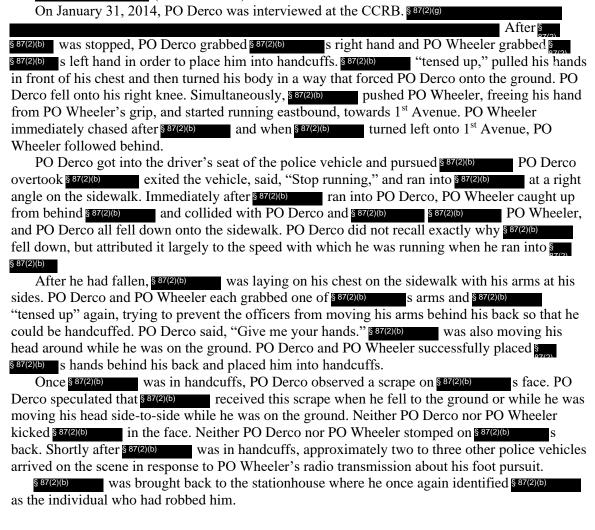
Page 6
CCRB Case # 201304829

• On May 26, 2013, PO Derco worked from 11:15 pm to 7:50 am, was assigned to Patrol Sector EH with PO Wheeler, was dressed in uniform and was assigned to a marked sedan, RMP #3915.

Memo Book: (encl. C13-14)

On May 26, 2013, PO Derco noted in his memo book that at 5:20 am, he backed Sector D on a larceny of a cell phone in progress. A black male wearing orange sneakers and a green jacket was the suspect. At 5:22 am, PO Derco observed a male that fit the description of the larceny suspect. As PO Wheeler and he attempted to detain the perpetrator, he pushed PO Wheeler and PO Derco, which causex PO Derco to fall to the ground and hurt his right knee. PO Wheeler pursued on foot and PO Derco followed in the car. The perpetrator was apprehended at 111th Street between 1st Avenue and 2nd Avenue. The perpetrator resisted arrest. At 5:40 am, PO Derco noted that he was at the stationhouse for arrest processing.

CCRB Statement: (encl. C15-17)



Medical Records

s FDNY Prehospital Care Report, which was prepared on May 26, 2013, stated that \$87(2)(b) had a one inch by one inch abrasion on his mid-left cheek and swelling on the

Page 7
CCRB Case # 201304829

right side of his mouth. The report also noted that \$87(2)(b) had an unsteady gait and that he had consumed alcohol prior to receiving treatment. also state that § 87(2)(b) s medical records from § 87(2)(b) abrasion, or friction burn, to the left side of his face and scratches on his neck. § 87(2)(6) reported consuming a half liter of liquor on the date of the incident. At \$87(2)(b) \$87(2)(b) discharged from the hospital with a 2 mg dose of Risperdal, an antipsychotic used to treat schizophrenia and bipolar disorder. **NYPD Documents Medical Treatment of Prisoner Report:** (encl. D1) On May 26, 2013, PO Damaris Malave prepared a medical treatment of prisoner report for The report noted that § 87(2)(b) was transported to § 87(2)(b) by ambulance in order to receive treatment for an injury that is described once as a "laceration" to his face and then later on the same piece of paper as an "abrasion" to the left side of his face. § 87(2)(b) was ultimately medically cleared for arraignment **Arrest for Incident and Disposition** [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] **Status of Civil Proceedings** has not filed a Notice of Claim with the City of New York as of January 14, 2014 with regard to the incident (encl. E6). Civilian's Criminal History [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] Civilian's CCRB History This is the first CCRB complaint filed by §87(2)(b) (encl. A3). **Subject Officers' CCRB History**

- PO David Wheeler has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. A1).
- PO Christopher Derco has been a member of the service for five years and there are three substantiated CCRB allegations against him (encl. A2-3):
 - In CCRB case number 201003003, PO Derco had one allegation of abuse of authority (a retaliatory summons) substantiated against him. The CCRB recommended that charges be brought against him and the NYPD penalized him with instructions.
 - o In CCRB case number 201104579, PO Derco had two allegations of abuse of authority (a stop and a frisk) substantiated against him. The CCRB recommended that he receive

Page 8 **CCRB Case # 201304829**

command discipline; however, the NYPD did not penalize PO Derco because the investigation exceeded its statute of limitations.

Conclusion

Identification of Subject Officers

Both PO Wheeler and PO Derco acknowledged participating in this incident.

In	vestigative Findings and Recommendations
•	Allegation A) Force: PO Christopher Derco used physical force against §87(2)(b)
•	Allegation B) Force: PO David Wheeler used physical force against \$87(2)(6)
	alleged that it was he, not \$87(2)(b) who was the victim of an attempted
	robbery. And yet, \$87(2)(b) stated, PO Wheeler and PO Derco stopped him on the street
	and informed him that he had been reported as having engaged in an unspecified criminal act
	stated that in response he compliantly kneeled down, placed his hands behind his
	back so that PO Wheeler could handcuff him, and then once he was in handcuffs, PO
	Wheeler pushed him down onto his chest. While he was in this position, lying prone on the
	street, PO Derco kicked him once on the left side of his face and stomped on his back
	numerous times.
	PO Wheeler, PO Derco, and § 87(2)(b) provided a different version of events, one in
	which all three of them consistently stated that it was \$87(2)(b) who robbed \$87(2)(b)
	and was then stopped briefly by PO Derco and PO Wheeler before he fled on foot. When
	was finally apprehended by the officers, PO Derco and PO Wheeler both stated that is
	was in the midst of a high-speed foot pursuit that ended with \$87(2)(b) being brought to the
	ground when PO Derco graphed him around the upper-hody and PO Wheeler collided into

was finally apprehended by the officers, PO Derco and PO Wheeler both stated that it was in the midst of a high-speed foot pursuit that ended with \$\frac{87(2)(b)}{2}\$ being brought to the ground when PO Derco grabbed him around the upper-body and PO Wheeler collided into them, sending the three men tumbling onto the ground. \$\frac{87(2)(b)}{2}\$ did not say that PO Derco assisted PO Wheeler in halting \$\frac{87(2)(b)}{2}\$ s flight, and instead stated that PO Wheeler acted alone in bringing \$\frac{87(2)(b)}{2}\$ to the ground. PO Wheeler stated that once \$\frac{87(2)(b)}{2}\$ was on the ground, the officers did not have any difficulty placing him into handcuffs. PO Derco stated that \$\frac{87(2)(b)}{2}\$ initially did not easily provide his hands to the officers and that he moved his head from side to side while he was lying face-down on the sidewalk. Both officers denied kicking \$\frac{87(2)(b)}{2}\$ in the face or stomping on his back and \$\frac{87(2)(b)}{2}\$ sustained the injury to his left cheek, but both speculated that it happened when he fell to the ground.

Patrol Guide Procedure 203-11 (encl. i-ii) affords officers the minimum necessary force
to effect an arrest. § 87(2)(9)

Page 9 CCRB Case # 201304829

§ 87(2)(g)			
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Investigator: Signature	Print	Date	
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Supervisor: Title/Signature	Print	Date	
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Reviewer:	Print	 Date	
Title/Signature	Timt	Date	
Reviewer:			
Title/Signature	Print	Date	